

Gulf will receive interference from co-channel systems under the current rules, which are designed to deal with terrestrial rather than over-water operation. Because PetroCom's petition raises issues relevant to the instant rulemaking, we incorporate it into the record of this proceeding. We seek comment on whether we should amend our interference standards to protect Gulf SMR operators against interference.

### 3. Other Services

63. We further request comment on licensing possibilities for other CMRS services in the Gulf of Mexico. Proposals for the licensing of additional services in the Gulf should include: an analysis of the demand for such service, detailed definitions of potential Gulf service areas, service and coverage requirements, and interference standards that will adequately protect land-based service providers.

## IV. PROCEDURAL MATTERS

### A. Regulatory Flexibility Act

64. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the policies and rules proposed in this *Second Further Notice of Proposed Rule Making*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice of Proposed Rule Making* provided above in section V(D). The Secretary shall send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

65. **Reason for Action:** In order to reexamine our cellular service rules as they apply to the Gulf of Mexico Service Area ("GMSA") we initiated this rulemaking proceeding. Since the establishment of the GMSA, conflict has arisen between the GMSA licensees, and the land-based cellular service providers in the Gulf of Mexico Region over the provision of service to coastal areas. Further, the United States Court of Appeals for the District of Columbia Circuit has instructed us to reexamine certain of our cellular licensing policies insofar as they apply to GMSA licensees.<sup>104</sup>

66. **Objectives:** Our objectives in this rulemaking proceeding are (1) to establish comprehensive rules that will reduce conflict between GMSA licensees and land-based cellular service providers, (2) provide regulatory flexibility, to GMSA licensees, that recognizes the inherent transitory nature of water-based cellular cites, and (3) award licenses so as to maximize the use of spectrum in, and provide high quality service to, highly traveled coastal waters.

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<sup>104</sup> *Petroleum Comms., Inc. v. FCC*, 22 F.3d 1164 (D.C. Cir. 1994).

67. **Legal Basis:** The proposed action is authorized under the Communications Act, Sections 4(i), 7, 303(c), 303(f), 303(g), 303(r), and 332, 47 U.S.C. §§ 154(i), 303(c), 303(f), 303(g), 303(r), 332, as amended.

68. **Description of and, Number of, Small Entities Affected by the Proposed Rule:** The rule changes proposed in this proceeding will affect all small businesses which provide cellular service in the GMSA or coastal areas. The Commission will be required, in its Final Regulatory Flexibility Analysis, to estimate the number of small entities to which the rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist in this analysis, commenters are requested to provide information regarding how many total entities, existing and potential, will be affected by the rules proposed in this *Second Further Notice of Proposed Rulemaking*. We particularly seek estimates of the number of entities, existing and potential, that will be considered small businesses. The definition of "small business" approved by the Small Business Administration, and used in the PCS C-Block auction, is a firm that has had revenues of less than \$40 million in each of the last three calendar years.<sup>105</sup> We seek comment as to whether it would be appropriate to extend this definition to this context. We further request that each commenter identify whether it is a small business under this definition. If the commenter is a subsidiary of another entity, this information should be provided for both subsidiary and the parent entity.

69. **Reporting, Recordkeeping, and Other Compliance Requirements:** This information is supplied in the Paper Work reduction Act, *infra*.

70. **Federal Rules Which Overlap, Duplicate or Conflict With These Rules:** None.

71. **Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives:** The objective of the current rulemaking proceeding is to improve the quality of service provided in the Gulf region, and to establish rules that accurately reflect the realities of both water-based and land-based service providers. To the extent that this rulemaking modifies existing regulations, it is our objective to communicate a benefit to all service providers in the Gulf region without regard to the size of the entity. The impact on small entities in the proposals in the *Second Further Notice of Proposed Rulemaking* is the opportunity to provide service in accordance with a regulatory framework that accurately reflects the geographic and demographic realities of the region. Given the low burden of compliance, reporting, and performance requirements for the provision of cellular service, no alternatives to these requirements were deemed necessary for small entities. This *Second Further Notice of Proposed Rulemaking* solicits comment on the variety of alternatives discussed herein, any significant alternatives submitted in the comments will be considered.

## **B. Paperwork Reduction Act**

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<sup>105</sup> See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5608, ¶ 175 (1994).

72. The rule changes contained herein were analyzed with respect to the Paperwork Reduction Act of 1980 and were found to impose no new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act.

#### **C. Ex Parte Rules - Non-Restricted Proceeding**

73. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules.<sup>106</sup>

#### **D. Comment Period**

74. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before June 2, 1997, and reply comments on or before July 2, 1997.<sup>102</sup> To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. A copy of all comments should also be filed with the Commission's copy contractor, ITS, Inc., 2100 M Street, N.W., Suite 140, (202) 857-3800.

#### **E. Authority**

75. The proposed action is authorized under the Communications Act, Sections 4(i), 7, 303(c), 303(f), 303(g), 303(r), and 332, 47 U.S.C. §§ 154(i), 303(c), 303(f), 303(g), 303(r), 332, as amended.

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<sup>106</sup> See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a) (1994).

<sup>102</sup> 47 C.F.R. §§ 1.415, 1.419 (1994).

**F. Ordering Clause**


76. Accordingly, IT IS ORDERED that pursuant to Sections 1-5 of the Communications Act of 1934, as amended, 47 C.F.R. § 151-155, a NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED.

77. IT IS FURTHER ORDERED that the Secretary shall send a copy of this SECOND FURTHER NOTICE OF PROPOSED RULEMAKING, including the regulatory flexibility certification to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ *et seq.* (1981).

**G. Further Information**

78. For further information concerning this proceeding, contact Zenji Nakazawa, Legal Branch, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418-0620.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

## APPENDIX A

## Final Rules

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. 154 and 303.

2. Section 22.99 is amended by adding definitions, inserted in proper positions to maintain alphabetical order, for the following terms:

**§ 22.99 Definitions.**

\* \* \* \* \*

**GMSA Coastal Zone.** The geographical area within the Gulf of Mexico Service Area that lies between the coast line and a line defined by Great Circle arcs connecting the following points (geographical coordinates listed as North Latitude, West Longitude) consecutively in the order listed:

(1) 26°00' 97°00'	(7) 29°30' 93°00'	(13) 28°40' 89°30'	(19) 28°30' 83°00'
(2) 27°30' 97°00'	(8) 29°20' 92°30'	(14) 29°00' 88°40'	(20) 28°00' 83°15'
(3) 28°00' 96°30'	(9) 29°20' 91°40'	(15) 30°00' 88°30'	(21) 27°00' 83°00'
(4) 28°30' 95°30'	(10) 29°00' 91°10'	(16) 30°00' 86°00'	(22) 26°00' 82°20'
(5) 29°00' 94°30'	(11) 28°50' 90°50'	(17) 29°10' 85°00'	(23) 25°00' 81°30'
(6) 29°30' 93°30'	(12) 29°00' 89°40'	(18) 29°30' 84°00'	(24) 24°40' 83°00'
			(25) 24°00' 83°00'

\* \* \* \* \*

**Gulf of Mexico Service Area (GMSA).** The cellular market comprising the water area of the Gulf of Mexico, bounded on the West, North and East by the coast line. Coast line, for this purpose, means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea, and the line marking the seaward limit of inland waters. Inland waters include bays, historic inland waters and waters circumscribed by a fringe of islands within the immediate vicinity of the shoreline.

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3. Section 22.123 is amended by revising paragraph (g)(2) to read as follows:

**§ 22.123 Classification of filings as major or minor.**

\* \* \* \* \*

(g) \* \* \*

(2) Request an authorization for facilities that would expand the cellular geographic service area (CGSA) of an existing cellular system into unserved area, unless the proposed expansion would be into unserved area where the licensee applying has, on the date the filing is received, the exclusive right to expand or modify its CGSA pursuant to § 22.947 or § 22.948;

\* \* \* \* \*

4. Section 22.131 is amended by revising paragraph (d)(2)(iv) to read as follows:

**§ 22.131 Procedures for mutually exclusive applications.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(iv) Any application to expand the CGSA of a cellular system (as defined in § 22.911) into unserved area, unless the proposed expansion would be into unserved area where the licensee applying has, on the filing date, the exclusive right to expand or modify its CGSA pursuant to § 22.947 or § 22.948.

\* \* \* \* \*

5. Section 22.911 is amended by adding a new paragraph (c)(4) and by removing the Note that follows paragraph (a)(6), as follows:

**§ 22.911 Cellular geographic service area.**

\* \* \* \* \*

(c) \* \* \*

(4) During the term of the authorization of the first-authorized cellular system on each channel block in the GMSA, the licensee of that system and the licensee of any adjacent market cellular system on the same channel block may agree that any service area boundary extending into any portion of the GMSA other than the GMSA Coastal Zone is a part of the CGSA of the extending system.

6. Section 22.912 is amended by adding additional sentences to paragraphs (b) and (c), to read as follows:

**§ 22.912 Service area boundary extensions.**

\* \* \* \* \*

(b) \* \* \* Except as restricted in paragraph (d) of this section, licensees of the first authorized cellular systems in the GMSA may allow SAB extensions from the adjacent market system on the same channel block into their CGSA and/or unserved area in the GMSA, other than in the GMSA Coastal Zone, during the term of their GMSA cellular system authorizations.

(c) \* \* \* Except as restricted in paragraph (d) of this section, licensees of the first authorized cellular systems in the GMSA that also are the applicant or licensee on the same channel block in the adjacent market may allow or propose SAB extensions from their adjacent market system into their CGSA and/or unserved area in the GMSA, other than in the GMSA Coastal Zone, during the term of their GMSA cellular system authorization.

\* \* \* \* \*

7. A new Section 22.948 is added as follows:

**§ 22.948 Exclusive right to expand or modify CGSA within the GMSA.**

The licensee of the first authorized cellular system on each channel block in the Gulf of Mexico Service Area (GMSA) is afforded, for the full term of its authorization, an exclusive right to expand or modify its CGSA anywhere within the GMSA, other than within the GMSA Coastal Zone.

(a) Except as provided in paragraph (b) of this section, the FCC does not accept applications for authority to operate a new cellular system in any unserved area in the GMSA, other than unserved area within the GMSA Coastal Zone.

(b) During the term of its authorization, the licensee of the first authorized cellular system on each channel block in the GMSA may enter into contracts with eligible parties, allowing such parties to apply (FCC Form 600) for a new cellular system on that channel block in any area within the GMSA, other than the GMSA Coastal Zone. The FCC may grant such applications if they are in compliance with the rules in this part.

(1) The contracts must define the CGSA of the subsequent cellular system in accordance with § 22.911, including any expansion rights ceded. If not exercised, any such expansion rights terminate when the authorization of the first cellular system expires.

(2) The license term of the first authorized cellular system on each channel block in the GMSA is not extended or affected in any way by the initial authorization of any subsequent cellular systems pursuant to paragraph (b) of this section.

(3) The FCC will accept applications for assignment of authorization or consent to transfer of control of the GMSA systems.